

G. GEOFFREY ROBB (131515)
JOSHUA A. SOUTHWICK (264296)
GIBSON ROBB & LINDH LLP
201 Mission Street, Suite 2700
San Francisco, California 94105
Telephone: (415) 348-6000
Facsimile: (415) 348-6001
Email: grobb@gibsonrobb.com
jsouthwick@gibsonrobb.com

Attorneys for Plaintiffs
INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WHA

C 13 1088

INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA, a corporation,

Plaintiff,

v.

UPS GROUND FREIGHT, INC. dba UPS
FREIGHT, a corporation,

Defendants.

Case No.

**COMPLAINT FOR DAMAGE TO CARGO
PURSUANT TO 49 U.S.C. SECTION 14706**

(\$398,068.28)

Plaintiff's complaint follows:

GENERAL ALLEGATIONS

1. Plaintiff INDEMNITY INSURANCE COMPANY OF NORTH AMERICA ("INA") is now, and at all times herein material was, a corporation duly organized and existing by virtue of law and was the insurer of the hereinafter described cargo shipment.

2. Plaintiff is informed and believes and on the basis of that information and belief alleges that UPS GROUND FREIGHT, INC. dba UPS FREIGHT ("UPS") is now, and at all times herein material was, a Virginia corporation duly organized and existing by virtue of law, and was engaged in business as a common carrier for interstate hire within the geographical boundaries of the Northern District of California.

1 3. Plaintiff's complaint alleges a cause of action for damage to cargo during interstate
2 motor carriage, and thereby pleads this matter under the Carmack Amendment, codified at 49
3 U.S.C. section 14706. This Court has subject matter jurisdiction pursuant to 28 U.S.C. section
4 1331. Defendant operates in this district and venue is therefore proper under 49 USC
5 14706(d)(1).

6 4. Plaintiff is informed and believes and on the basis of such information and belief
7 alleges that on or about May 25, 2012, at Memphis, TN, defendant UPS received 557 cartons of
8 of drugs and medicines owned by plaintiff's insured GE Healthcare, for motor truck carriage.
9 Defendant agreed, under contracts of carriage and in return for good and valuable consideration,
10 to carry said cargo from Memphis, TN to Eden Prairie, MN, and there deliver said cargo in the
11 same good order, condition, and quantity as when received.

12 5. Plaintiff is informed and believes and thereon alleges that in breach of said
13 agreements, defendant UPS failed to deliver the cargo in the same good order, condition, and
14 quantity as when received at Memphis. Instead, GE Healthcare's medicines were lost and/or
15 damaged during motor truck carriage.

16 6. Prior to the shipment of the herein described cargo and prior to any loss thereto,
17 plaintiffs INA issued its policy of insurance whereby it agreed to indemnify the owner of said
18 cargo, and its assigns, against loss of or damage to said cargo while in transit, and INA has
19 therefore become obligated to pay and has paid to the persons entitled to payment under said
20 policy, the amount of \$398,068.28 on account of the herein described loss.

21 7. Following the loss, the owner of the cargo assigned to INA all claims, actions,
22 causes of action, or rights of recovery that it has and continues to have against any and all third
23 parties for damage to the cargo, which specifically includes its right to recover the damages it
24 suffered in the amount of \$398,068.28, which represents the net amount of the loss, including the
25 insured's deductible interest of \$50,000, following reasonable salvage and remediation efforts.
26 The owner of the Cargo, and its assignee and subrogee INA have therefore been damaged in the
27 sum of \$398,068.28.

28 ///

1 8. Plaintiff and its insured made a timely claim to UPS for the damages. UPS has
2 made no payment to plaintiff or its assured in response to the claim despite demand therefore.

3 Wherefore, plaintiff prays for judgment as hereinafter set forth.

4 1. For principal damages in the amount of \$398,068.28;


5 2. For interest thereon;

6 3. And for its costs incurred herein;

7
8 Dated: March 11, 2013

Respectfully submitted,

9 GIBSON ROBB & LINDH LLP

10
11 
12 _____
13 Joshua A. Southwick
14 Attorneys for Plaintiff
15 INDEMNITY INSURANCE COMPANY OF
16 NORTH AMERICA
17
18
19
20
21
22
23
24
25
26
27
28